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CAPITOL IP, PLLC			EISEMAN, ADAM JARED	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/501,555

Applicant(s)

NIKLAJSSON, BO JOHAN NIKLAS

Examiner

ADAM J. EISEMAN

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The amendments to claims 1, 18 and 20 and arguments/remarks filed on 6/20/2008 are acknowledged and entered into the record on file.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1, 11, 15, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anhauser et al (US Patent 5,044,372) in view of Liedtke (US Patent 4,765,986).

5. Anhauser discloses an epicutaneous test plaster, comprising: a flexible carrier (12) including an adhesive layer (13) for removably adhesion of the epicutaneous test plaster to a skin portion; a plurality of test chambers (around 14) distributed over the adhesive layer of the carrier; a removable cover layer (16) extending over all the test chambers and the carrier, wherein the test chambers are formed as separate chambers,

each test chamber including, a support element (14) secured to the carrier and including a support layer adhered to a moisture barrier layer (column 5, line 30), a frame-shaped plastic layer (15) secured on top of and embracing the support element and defining at least some sidewalls of the test chamber that directly confront each other (see figure 1), and wherein the cover layer is removably secured by way of the adhesive layer of the carrier. In regards to claim 11, each support element is secured to the carrier by way of an adhesive layer, whose one side is fixed to the carrier and whose other side is fixed to the support element. In regards to claim 15, each frame-shaped plastic layer is secured to the support element by way of an adhesive layer, whose one side is fixed to the plastic layer and whose other side is fixed to the support element.

However, Anhauser does not expressly disclose that a layer of adhesive is on the outwardly directed side of the frame-shaped plastic layer or that the frame-shaped plastic layer is foam.

Liedtke teaches a layer of adhesive (11) on the skin contacting side of a frame-shaped foam plastic layer (10) of a plaster (figures 4 and 5). The adhesive layer is for attaching the plastic layer to a test area. The adhesive layer extends all the way around the perimeter of the foam layer and has an opening through which a chamber is exposed.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to substitute Anhauser's frame-shaped plastic layer with a frame-shaped foam plastic layer having a layer of adhesive on the outwardly directed side of the frame as taught by Liedtke in order to achieve the predictable result of providing an

alternative fluid impermeable material flexible frame layer with additional adhesive to further adhere the plaster to skin to prevent leakage. This is substitution of one known element (Anhauser's frame layer in a test plaster) with another (Liedtke's foam plastic frame layer having skin contacting adhesive) to obtain a predictable result.

6. Claims 2-4, 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anhauser et al. (US 5,044,372) as modified by Liedtke (US 4,765,986), as applied to claims 1, 11, 15 and 18-20 above, and further in view of Rudiger et al. (US 4,887,611).

Anhauser as modified by Liedtke does not expressly disclose that the cover layer is a plastic layer with blister bubbles.

Rudiger teaches an upper plastic cover layer (column 3, lines 44-47) with blister bubbles (20) and a lower cover layer, which enclose test chambers. The blister bubbles have a groove (see above 19 in figure 3) in contact with a rim of the test sites. The cover layer of Rudiger improves handling, storage and transport of the plaster (column 3, lines 39-49).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have substituted an upper cover layer with blister bubbles and a lower cover layer as taught by Rudiger for the cover layer of Anhauser as modified by Liedtke in order to achieve the predictable result of enclosing the plaster for handling, storage, and transport purposes.

In regards to claim 3, Rudiger discloses that the cover layer has a polypropylene layer but does not expressly disclose that the cover layer has a polyethylene layer.

However, Rudiger states that the cover layer should be coated with an inert material (column 3, lines 45-46). Rudiger further teaches that polypropylene and polyethylene are alternative inert plastics (column 2, lines 44-51). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have substituted the polypropylene on the cover layer with polyethylene because the substitution would have yielded predictable results and because Rudiger teaches that these two materials are alternative inert plastics. Furthermore, Liedtke teaches that the cover layer and base layer are an occlusive plastic foil (column 5, lines 35-57). Thus it would have been obvious to one of ordinary skill in the art to use a plastic foil instead of a metal foil as taught by Rudiger as substitution of one known element with another with predictable results.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anhauser et al. (US 5,044,372) as modified by Liedtke (US 4,765,986), as applied to claims 1, 11, 15 and 18-20 above, and further in view of Quisno (US 4,450,844).

Even though Anhauser states that various materials can be used (column 3, lines 26-31), including treated papers, Anhauser as modified by Liedtke does not expressly disclose that the cover layer is a paper liner with a silicone layer that faces the test chambers.

Quisno teaches a paper cover liner with a silicone layer that faces test areas (column 4, lines 33-37).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have substituted the paper liner taught by Quisno for the cover

layer of Anhauser as modified by Liedtke because the substitution would have yielded predictable results such as protecting the adhesive until use.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anhauser et al. (US 5,044,372) as modified by Liedtke (US 4,765,986), as applied to claims 1, 11, 15 and 18-20 above, and further in view of Hoffmann (US RE37,934).

Although Anhauser discloses a flexible porous surgical tape, Anhauser as modified by Liedtke does not expressly disclose a methacrylate-based adhesive layer.

Hoffmann teaches a methacrylate-based adhesive layer (column 7, lines 13-26) for fixing a plaster to the skin.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have substituted the methacrylate-based adhesive as taught by Hoffmann for the adhesive of Anhauser as modified by Liedtke to achieve the predictable result of adhering a plaster to skin.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anhauser et al. (US 5,044,372) as modified by Liedtke (US 4,765,986), as applied to claims 1, 11, 15 and 18-20 above, and further in view of Breneman (US 4,543,964).

Anhauser as modified by Liedtke teaches using a cotton support element (column 5, line 29), but does not expressly disclose that the support element is cellulose-based.

Breneman teaches that cotton and methyl cellulose are known alternative absorbent materials for use in a test plaster (column 4, lines 15-20).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have substituted a cellulose-based material as taught by Breneman for the cotton of Anhauser as modified by Liedtke to achieve the predictable result of providing an absorbent material to hold a test substance.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anhauser et al. (US 5,044,372) as modified by Liedtke (US 4,765,986), as applied to claims 1, 11, 15 and 18-20 above, and further in view of van der Bend (NL 8701577).

Anhauser as modified by Liedtke does not expressly disclose that the frame-shaped foam plastic layer consists of a polyethylene foam.

van der Bend teaches making a frame-shaped foam plastic layer out of a polyethylene foam (see translation submitted by Applicant).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have used a polyethylene foam as taught by van der Bend in the frame-shaped foam plastic layer of Anhauser as modified by Liedtke because it is well-known and routine in the art to substitute alternative materials to yield predictable results.

11. Claims 9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anhauser et al. (US 5,044,372) as modified by Liedtke (US 4,765,986), as applied to claims 1, 11, 15 and 18-20 above, and further in view of Pluim, Jr. (US 4,472,507).

In regards to claim 13, the frame-shaped foam fixing layer of Anhauser extends outside the rim portions of the support element. Anhauser as modified by Liedtke does not expressly disclose that the support element is secured to the carrier by a flexible

double-adhesive tape or that the frame-shaped foam plastic layer is secured to the support element by a flexible double-adhesive tape.

Pluim teaches the use of a flexible double-adhesive tape for use in adhering layers of a carrier together (column 3, lines 17-21).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have used a flexible double-adhesive tape as taught by Pluim in the plaster of Anhauser as modified by Liedtke to achieve the predictable result of adhering layers together.

12. Claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anhauser et al. (US 5,044,372) as modified by Liedtke (US 4,765,986) and Pluim, Jr. (US 4,472,507), as applied to claims 9, 12 and 13 above, and further in view of Kurokawa et al. (US 4,158,359).

Anhauser as modified by Liedtke and Pluim does not expressly disclose using a synthetic rubber-based adhesive on the double-adhesive tape.

Kurokawa teaches that synthetic rubber is a known pressure-sensitive adhesive that has no influence on human skin (column 5, lines 33-38).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have used a synthetic rubber-based adhesive as taught by Kurokawa in the plaster of Anhauser as modified by Liedtke and Pluim to achieve the predictable result of adhering layers together with no influence on human skin.

13. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anhauser et al. (US 5,044,372) as modified by Liedtke (US 4,765,986), as applied to claims 1, 11, 15 and 18-20 above, and further in view of Kraft et al. (US 4,809,707).

Anhauser as modified by Liedtke does not expressly disclose that the frame-shaped foam plastic layer is a flexible double-adhesive tape.

Kraft teaches a flexible double-adhesive tape (46) surrounding a support element for the purpose of affixing the support element to a patient (column 4, lines 12-14). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have made the frame-shaped foam plastic layer of Anhauser as modified by Liedtke out of double-adhesive tape as taught by Kraft to achieve the predictable result of affixing a support element to a patient.

Response to Amendment

14. The applicant's amendment's, arguments, and remarks have been considered but are moot in view of the new rejections described above.

Regarding the arguments to the use of Liedtke (DE 3811564), a new reference has been used, Liedtke (US 4,765,986). In this rejection the frame-shaped foam plastic layer (element 10) having an adhesive (element 11) on the skin contacting side of the foam layer is substituted for Anhauser's frame-shaped foam plastic layer (element 15). This substitution would yield the predictable result of having a frame-shaped foam plastic layer providing a chamber for the support element and test chamber which would contact the skin and adhere to the skin. Furthermore, although Liedtke's plaster is disclosed for dispensing medication to the skin, it would also provide the necessary

functions needed by a test substance to the skin since it would create a chamber (open area in the frame which would normally house the medication) for adhering to the skin which is fluid impermeable and capable of housing a support and testing materials.

Regarding arguments for claims 2 and 21; Rudiger teaches that the cover has domes which line up with the test plasters. It is obvious from Rudiger's disclosure and teaching that the cover layer has dome-like bubbles over the frame elements for protection. Rudiger's cover layer teaches the same effective function of a cover layer having blister bubbles, the only difference being how the domes or bubbles are formed. These differences are negligible as they would have been obvious to one of ordinary skill that they could both provide the same function and are obvious variants of one another.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADAM J. EISEMAN whose telephone number is (571)270-3818. The examiner can normally be reached on Mon-Thurs, 8:00 PM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AE
10/24/2008
/A. J. E./
Examiner, Art Unit 3736

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736